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PATENT

The rejection of Claims 1-18 under 35 U.S.C. § 103 as being unpatentable over Stottmann et al. (U.S. Patent No. 5,431,294) in view of Perkins et al. (U.S. Patent No. 6,257,440) or Andreaggi et al. (U.S. Patent No. 3,924,775) is respectfully traversed.

Stottmann et al. describe a flatware basket (31) for use in a modular basket assembly in a dishwasher. The basket (31) includes a bottom wall (36) bounded by spaced apart side walls (37), (38) and end walls (39), (40) forming an open top receptacle. A vertical cross wall (50) extends between the side walls (37), (38) generally midway between the end walls (39), (40), and a handle (52) extends along and projects upwardly from the cross wall (50). A cover (65) is attached to the handle (52) and is movable between a generally vertical position within handle (52) and a generally horizontal position on either side of the handle (52) and covering a portion of the basket (31). Stottmann et al. col. 3, line 22 to col. 4, line 41.

Notably, the handle (52) described by Stottmann et al. is not movable with respect to the basket, and any problems of the handle (52) interfering with loading and unloading of the basket are not recognized by Stottmann et al.

Perkins et al. describe a bucket including a pivotally mounted handle.

Andreaggi et al. describe a lockable angularly adjustable handle (12) attached to a housing (14) of an electrical indicating instrument (10). The handle (12) serves as a support for instrument (10) whereby the front portion of the instrument may be raised above a supporting surface while a rear portion of the instrument rests on the supporting surface. Andreaggi et al. col. 3, line 40 to col. 4, line 32.

The assertion in the Office Action that it would have been obvious to substitute for the handle of the basket of Stottmann et al. with a handle movable at various positions as shown by either Perkins et al. or Andreaggi et al. in order to enhance the handling process is respectfully traversed.

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Applicants respectfully submit that a prima facie case of obviousness has not been established. A motivation to combine the teachings of different references must come from the references themselves, and it is impermissible to use the Applicants' specification and teaching as a motivation to combine the references. As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown. In the instant rejection, Stottmann et al. discloses a flatware basket assembly with a stationary handle and movable cover, while Perkins et al. and Andreaggi et al. describe a bucket and an electrical instrument with movable handles. Stottmann et al. in claim 3 recites, among other limitations, multiple baskets secured together, each basket including a handle projecting upwardly and positioned to form an essentially continuous handle across the basket assembly when the baskets are secured in their side-by-side configuration. Thus, Stottmann et al. does not contemplate movable handles and there would be no incentive to add movable handles to the Stottmann basket. Rather than enhancing the handling process as suggested in the Office Action, the addition of movable handles to the Stottmann baskets would prove problematic since the handles would not always be aligned. Because the proposed modification would render the prior invention (aligned handles) being modified unsatisfactory for its intended purpose (continuous handle across the basket sections), there is no suggestion or modification to make the proposed modification. See MPEP 2143.01 subsection titled "The Proposed Modification Cannot Render The Prior Art Unsatisfactory For Its Intended Purpose" and In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).


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The fact that references can be combined to teach every element of a claimed invention will not, without a motivation to combine, support a prima facie case of obviousness. In combining the teachings of the prior art, obviousness requires that some teaching, suggestion, or motivation be found, either explicitly or implicitly, in the prior art itself. While the knowledge of one of ordinary skill in the art can be considered in an implicit showing of a motivation to combine, the fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish prima facie obviousness. MPEP 2143.01. See also Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993) and In re Kotzab, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000)

For the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 1-18 be withdrawn.

In view of the foregoing remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,


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